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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,277	12/20/2001	Yvette L. Hammonds	17,704	6833

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,277

Applicant(s)

HAMMONDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8,9</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Specification

Drawings

1. The drawings are objected to because in Figures 2A-4, the descriptive text should be avoided, i.e. such text could be inserted in the Detailed Description section. Also in the Figures the structure denoted 56 does not show an engagement member as described, i.e. see paragraph bridging pages 4-5. In Figure 1E, a line from the right 36 should be provided. In Figure 1D', the lines from 56 should extend to engagement members. Also it appears that the lines from the middle 72 and the lower 70 should be dashed to denote underlying structure. In Figures 5A-5C, the lines are very light. Also, no quotation marks should be used. A line from each numeral should be provided leading to the structure it denotes and if that structure underlies other structure the line should be dashed. In Figure 5A, where is 70', see paragraph at page 7, line 7? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 8-14, e.g., the

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sheets, the core, the adhesive, the fastener component of claim 9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

3. The disclosure is objected to because of the following informalities: 1) On page 1, in the reference to prior applications, line 1, thereof, "priority...copending" should be --the benefit of --. 2) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01. 3) In the claims the Applicant uses the term "system" and appears to use it to mean "method" yet in the specification the term "system" is used to mean "product" or "apparatus". Which is it? A consistent use of the term "system" should be used, see MPEP 608.01(o). 4) In the paragraph at page 6, line 24, lines 3 and 6 thereof, "orienting" should be --orientation of --. 5) In the paragraph to page 5, line 26, on line 7, should --(FIG. 1B)-- be inserted after "72"? 6) In the paragraph at page 7, line 7, why is the first fastener component given two different designations, 70 and 70'? 7) Are the materials in claims 11-13 and those in Figures 2A-4 one and the same? If so, the structure shown in those Figures should be denoted.

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Appropriate correction is required.

Claim Objections

4. Claims 2 and 8-19 are objected to because of the following informalities: In claim 2, last line, "an" should be --the--. In claim 8, lines 7 and 8, after "from", "a" should be --the--. On line 17, "is" should be --in--. On line 20, "after "topsheet", --layer-- should be inserted and "an" should be --the--. In claim 15, line 2, before "garment", --a-- should be inserted. In claim 17, line 2, "is engaged" should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1-7, it is unclear whether the term "system" is being used to define a method or apparatus, e.g. in claim 1 it appears to define a method whereas in claims 2-7 it appears to define an apparatus. In claim 1, a positive structural antecedent basis for "the topsheet side" (lines 6-7) should be defined. Also, the description of the fasteners and wings is incomplete, i.e. how are the fasteners and wings positioned with regard to each other and the article so as to be

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able to function as set forth on lines 6 et seq of claim 1. In regard to claim 2, the description of the component, i.e. "configured so that it is adapted" with regard to the remainder of the article is also incomplete, i.e. how is the component arranged with regard to the article so as to be able to function as set forth on lines 2-3? Also a positive structural antecedent basis for "the fabric" should be set forth. In claim 7, is another step being claimed or not, i.e. "can"? Is other structure being claimed or not? In regard to claim 8, the description of the fastener components is unclear, i.e. is a first component and cooperating component required on each wing or just one wing, i.e. how many components at a minimum are required? Note the language "the...component" in claims 11-12. Also the description of the components is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth in the last subsection. In regard to claim 9, the discussion of claim 2 supra also applies to similar structure in this claim. Also, is this component in addition to those already claimed in claim 8, i.e. how many fasteners at a minimum are required? In regard to claim 10, a positive structural antecedent basis for "the interengaging fasteners" should be defined. Also lines 2 et seq appear to be redundant, see claim 8. In regard to claim 14, see discussion of claim 8 supra which also applies here. In regard to claims 15 and 16, see discussion of claims 1 and 2 supra which applies to similar language in these claims. Also, in regard to claim 16, it is unclear what is being claimed-merely an engaging step, i.e. of structure already claimed in claim 15, or a step of providing additional engagement members and an engaging step? In regard to claims 17-19, are the components in these claims and the fasteners in claim 15 one and the same? Are the steps in these claim and one of the steps

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in claim 15 one and the same? In other words, how many fasteners and how many steps at a minimum are being claimed?

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. It is noted that "system" as defined in claims 1-7 is interpreted as being a method.

Likewise, the overlapping and temporarily engaging steps in claims 1 and 15 are interpreted as being performed by the wearer rather than the manufacturer. Therefore, claims 1-7 and 15-19 are deemed to patentably distinguish over the prior art.

8. Claims 8-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al '484..

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In regard to claims 8 and 10-14, see Figures 1-10, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the adhesive and the peel strip are 58-59, the first and second wings are 34, 36, see also paragraphs 84-87 of Hammons et al, the fastener components are 102, 104, see also paragraphs 88-99, 107 and 108, and thereby Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at , e.g., Figures, col. 6, lines 48-51 and col. 8, lines 3-9, i.e. nonwoven pattern unbonded loop material. See also, Figures 25-28 and paragraph 142. With regard to the last subsection of claim 8 which recites capabilities, function or properties of the claimed structure: The Hammons et al device includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al , see MPEP 2112.01.

In regard to claim 9, see Figures 6-8 and paragraphs 121-123, i.e. the fastener component is the one fastener 102, 104 directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops, include engagement members, see page 9, lines 11-12 of the instant specification. Therefore, the Hammons device includes the claimed structure. Claim 9 recites function or capability of such structure on lines 2-3. However, since Hammons includes the same structure, there is sufficient factual basis for one to conclude that the functions or capability of such claimed structure is also inherent in the same structure of Hammons et al., see MPEP 2112.02.

9. Claims 8-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bien '929, and thus Mattingly '047.

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With regard to claims 8, 10-11 and 14, see Figures of Bien, i.e topsheet is 28, the backsheet is 30, the core is 32, the adhesive and peel strip are 34, 36 and the flaps and fastener components are set forth at col. 7, lines 29-59, and thereby Mattingly '047 at col. 6, line 44-col. 7, line 5, col. 2, lines 17-32 and col. 8, lines 9-41. It is noted that the portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO instead. With regard to the last subsection of claim 8 which recites capabilities, function or properties of the claimed structure, The Bien reference teaches a device which includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Bien et al , see MPEP 2112.01.

In regard to claim 9, see portions of references cited in the preceding paragraph, i.e. the fastener component is the one fastener directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops of the VELCRO, include engagement members, note page 9, lines 11-12 of the instant specification. Therefore, the Bien device includes the claimed structure. Claim 9 recites function or capability of such structure on lines 2-3. However, since Bien includes the same structure, there is sufficient factual basis for one to conclude that the functions or capability of such claimed structure is also inherent in the same structure of Bien, see MPEP 2112.02.

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Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Leak et al, '041.

Applicant claims the cooperating fastener component being of nonwoven loop material and a pattern unbonded material whereas Bien only teaches that such is a loop material.

However, see Leak et al, col. 1, lines 40-50 and col. 8, lines 55-59 and abstract. To employ a

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pattern unbonded nonwoven loop material as taught by leak et al on the Bien device as the loop material would be obvious to one of ordinary skill in the art in view of the recognition that Bien teaches a situation in which hook and loop fasteners have been employed and that such would also be economically efficient which would be desirable in any disposable article and the article of Bien being disposable.

Conclusion

12. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

June 25, 2003

K.M. Reichle
KARIN REICHEL
PATENT EXAMINER